

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Directional ONE Services, Inc. USA,

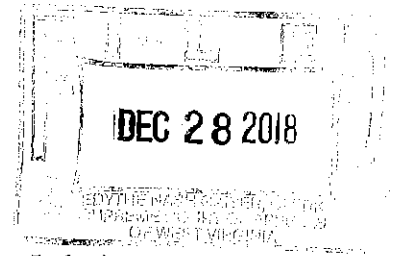
Plaintiff(s),

vs.

Antero Resources Corporation,

Defendant(s).

Tyler County Circuit Court
Civil Action No. 18-C-14
(Hon. David W. Hummel, Jr., Judge)



TO: THE HONORABLE CHIEF JUSTICE

MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION

Pursuant to Rule 29.06 of the West Virginia Trial Court Rules, the Plaintiff herein, by counsel, Christopher Kamper, Esq., respectfully requests the above-styled case be referred to the Business Court Division.

In regard to additional related actions:

- ☒ There are no known related actions.
 - ☐ The following related actions could be the subject of consolidation, and are
 - ☐ now pending
 - or
 - ☐ may be filed in the future. (Please list case style, number, and Court if any)
-
-

This action involves: (Please check all that apply)

- | | |
|---|--|
| <input checked="" type="checkbox"/> Breach of Contract; | <input type="checkbox"/> Commercial Non-consumer debts; |
| <input type="checkbox"/> Sale or Purchase of Commercial Entity; | <input type="checkbox"/> Internal Affairs of a Commercial Entity; |
| <input type="checkbox"/> Sale or Purchase of Commercial Real Estate; | <input type="checkbox"/> Trade Secrets and Trademark Infringement; |
| <input checked="" type="checkbox"/> Sale or Purchase of Commercial Products | <input type="checkbox"/> Non-compete Agreements; |
| Covered by the Uniform Commercial Code; | <input type="checkbox"/> Intellectual Property, Securities, |
| <input type="checkbox"/> Terms of a Commercial Lease; | Technology Disputes; |
| | <input checked="" type="checkbox"/> Commercial Torts; |

(continued on next)

☐ Insurance Coverage Disputes in Commercial Insurance Policies;

☐ Professional Liability Claims in Connection with the Rendering of Professional Services to a Commercial Entity;

☐ Anti-trust Actions between Commercial Entities;

☐ Injunctive and Declaratory Relief Between Commercial Entities;

☐ Liability of Shareholders, Directors, Officers, Partners, etc.;

☐ Mergers, Consolidations, Sale of Assets, Issuance of Debt, Equity and Like Interest;

☐ Shareholders Derivative Claims;

☐ Commercial Bank Transactions;

☐ Franchisees/Franchisors;

☐ Internet, Electronic Commerce and Biotechnology

☒ Disputes involving Commercial Entities; or

☐ Other (Describe) _____

In support of this motion, this matter contains issues significant to businesses, and presents novel and/or complex commercial or technological issues for which specialized treatment will be helpful, as more fully described here. This case involves a dispute concerning directional drilling services and equipment that were provided to Defendant by Plaintiff for horizontal drilling projects in Ohio and West Virginia. The technology is cutting edge and complex, and an understanding of the specialized pricing and contract arrangements surrounding use of the technology, the risk of loss while the technology is in use, the division of responsibility among the personnel involved, could be helpful to reaching a fair and equitable resolution of the parties' dispute.

In further support of this Motion, please find attached hereto an accurate copy of the operative Amended Complaint (Ex. A), the operative Answer and Counterclaims (Ex. B), Reply to Counterclaims (Ex. C), the docket sheet (Ex. D), and the Order Denying Motion to Dismiss (Ex. E).

In regard to expedited review, the Movant:

- ☒ DOES NOT request an expedited review under W.Va. Trial Court Rule 29.06(a)(4), and gives notice that all affected parties may file a memorandum stating their position, in accordance with W.Va. Trial Court Rule 29.
- ☐ hereby REQUESTS that the Chief Justice grant this Motion to Refer without responses, pursuant to W.Va. Trial Court Rule 29.06(a)(4), and contends that the following constitutes good cause to do so: N/A.

WHEREFORE, the undersigned hereby MOVES, pursuant to W.Va. Trial Court Rule 29, the Chief Justice of the West Virginia Supreme Court of Appeals to refer this case to the Business Court Division.

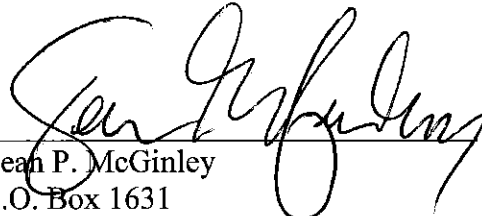
Respectfully submitted December 27, 2018.

Carver Schwarz McNab Kamper & Forbes, LLC



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Attorneys for Directional ONE Services Inc. USA

IN THE CIRCUIT COURT OF TYLER COUNTY, WEST VIRGINIA

DIRECTIONAL ONE SERVICES INC. USA,
a foreign corporation authorized to do business
in the State of West Virginia,

Plaintiff,

v.

Civil Action No.: 18-C-14
(Hon. David W. Hummel, Jr., Judge)

ANTERO RESOURCES CORPORATION,
a foreign corporation authorized to do business
in the State of West Virginia,

Defendant.

FILED

APR 19 2018

Candy L. Warner
Tyler Co. Circuit Clerk

FIRST AMENDED COMPLAINT with JURY DEMAND

Nature of the Case

1. Plaintiff Directional ONE Services Inc. USA ("Directional") is an oil and gas directional drilling contractor that has performed directional drilling services for defendant Antero Resources Corporation since October of 2014. The directional drilling working relationship dates back to President Kevin Onishenko's previous company, ARK Directional Services, who performed directional drilling for defendant beginning in July 2007. Recently, defendant has failed or refused to pay certain of plaintiff's invoices for work Directional has performed, even though defendant has routinely paid such invoices in the past. Plaintiff brings this action to enforce the parties' contract and collect on the invoices that defendant has failed or refused to pay.

Parties, Jurisdiction and Venue

2. Plaintiff Directional is a Colorado corporation authorized to do business in the State of West Virginia, with an address of 2167F State Route 821, Marietta, Ohio, 45750.

3. Defendant Antero Resources Corporation is a Colorado corporation authorized to do business in the State of West Virginia, with an address of 1615 Wynkoop Street, Denver, Colorado 80202.

4. This Court has jurisdiction because the actions and events leading to this litigation took place in Tyler County, West Virginia and because this case concerns real property located there.

5. Venue is proper in this Court because this action concerns real property located in Tyler County, West Virginia, and defendant owns property, does business, and may be found there.

General Allegations

6. Directional has been providing contract directional drilling services to defendant in the states of West Virginia and Ohio since approximately October 2014, and Mr. Onishenko's personal experience with defendant dates back to 2007.

7. As often happens in directional drilling, due to the extreme harsh environment of underground air drilling of a wellbore, drill bits and other downhole equipment on occasion become "lost in hole" or LIH through no fault of directional drilling provider.

8. As per accepted and standard industry practice, the well owner or well operator (defendant in this case) typically pays for such lost in hole equipment rather than expecting the directional drilling contractor to bear the cost.

9. Directional and defendant executed a Master Services Agreement effective August 29, 2014.

10. The parties agreed in the 2014 Master Services Agreement that defendant Antero would pay Directional for its Work. Section 10.1 of that agreement states: "Company [[Defendant Antero] will pay Contractor [Directional] for Work that is satisfactorily rendered and in accordance with this Agreement (i) at such rates and/or prices as are agreed to by Contractor and Company in the applicable Order or (ii) in accordance with Contractor's published schedule of rates and/or prices, as such rates and/or prices are in effect on the date of the Order after application of published or agreed discounts and/or credits." "Work" is a defined term in the agreement that includes "equipment" provided by the Contractor, as stated therein in section 1.19: "'Work' shall mean any and all services, labor, experience, expertise, vehicles, equipment, supplies, tools, manufactured articles, materials, facilities, and/or goods (in whole and/or in part) to be provided by Contractor to Company pursuant to this Agreement and/or any Order."

11. Before signing the agreement, in Mr. Onishenko's experience working for defendant, it was defendant's standard practice to pay lost in hole invoices.

12. The Master Services Agreement was drafted entirely by defendant, and Directional had no choice but to either sign it or decline to work for defendant.

13. That agreement contemplated that Directional would submit Rate Sheets to defendant identifying the amounts it would charge for its services.

14. The Rate Sheets included, among other things, posted rates that Directional would charge for lost in hole equipment.

15. One option that was available to defendant under the Rate Sheet was to purchase so-called "lost in hole insurance," which is not a third-party insurance policy, but rather an

upward adjustment in the total rates charged for the drilling project. Had defendant selected this contractual option, Directional would not have invoiced defendant for lost in hole equipment. However, for all transactions relevant to this action, defendant chose not to accept this option.

16. Since signing the Master Services Agreement, Directional has submitted, and defendant has received, approved, and paid invoices for lost in hole equipment on numerous occasions. Defendant's invoicing process requires field submittal as a first step, followed by review in the corporate offices in Denver, Colorado.

17. In reliance on defendant's conduct and the Rate Sheets defendant approved, Directional did not obtain third-party insurance coverage for its downhole tools, a practice that defendant knew and approved of.

18. Defendant used a contractor interface system known as ISNetwork ("ISN"), a web-based portal that assists defendant in managing contractor relationships. ISN helps defendant monitor contractor compliance with defendant's guidelines and requirements for, among other things, safety, drug testing, training, company liability, insurance, worker's compensation.

19. Directional's third-party insurance status was made known to defendant through the ISN system.

20. With defendant's knowledge and approval, ISN gave Directional an "A" grade at all times relevant to this action pertaining to its insurance status, including specific communications from defendant, sent through ISN to Directional, approving Directional's decision not to obtain third-party insurance for its downhole tools.

21. In 2015, Directional and defendant signed a second Master Services Agreement. The second Master Services Agreement was likewise drafted by defendant with no input or choice by Directional other than to sign or decline to work for defendant. It was in all material respects identical to the first Master Services Agreement between the parties.

22. As they had in the 2014 Master Services Agreement, the parties again agreed in the 2015 Master Services Agreement to an identical payment term whereby defendant Antero agreed to pay Directional for its Work. Section 10.1 of that agreement states: "Company [[Defendant Antero] will pay Contractor [Directional] for Work that is satisfactorily rendered and in accordance with this Agreement (i) at such rates and/or prices as are agreed to by Contractor and Company in the applicable Order or (ii) in accordance with Contractor's published schedule of rates and/or prices, as such rates and/or prices are in effect on the date of the Order after application of published or agreed discounts and/or credits." "Work" is a defined term in the agreement that includes "equipment" provided by the Contractor, as stated therein in section 1.19: "'Work' shall mean any and all services, labor, experience, expertise, vehicles, equipment, supplies, tools, manufactured articles, materials, facilities, and/or goods (in whole and/or in part) to be provided by Contractor to Company pursuant to this Agreement and/or any Order."

23. Directional's practice of submitting lost in hole equipment invoices continued after signing the second agreement, and defendant continued to pay for such lost in hole equipment, using the amounts specified in Directional's updated Rate Sheet.

24. On information and belief, defendant also routinely pays its other directional drilling contractors for lost in hole equipment, and has done so on numerous occasions and for years. This has been and continues to be industry practice.

25. To the extent there was any conflict between the Master Services Agreement and Directional's Rate Sheet, the Master Services Agreement was, by the exchange of written invoices, approvals, and payments referenced above, modified in writing in accordance with its terms, or such written modification was waived by the parties by their conduct or through circumstances that justify avoiding the requirement.

26. On December 20, 2017, Directional began work on a directional well known as the Jameson Unit 1H well.

27. Equipment became stuck in hole in the Jameson Unit 1H well on December 29, 2017.

28. Defendant attempted fishing operations for the retrieval of the stuck in hole tools but was not successful. Defendant did not consult Directional in any manner to discuss lost tools, but acted alone.

29. Directional field-submitted a lost-in-hole invoice based on the rates posted in its Rate Sheet, which defendant's field personnel reviewed and approved on January 2, 2018.

30. Defendant cemented over the well, plugging the wellbore entirely and preventing Directional from retrieving its equipment, on January 3, 2018.

31. Directional then submitted a lost in hole invoice for such equipment to the corporate offices of defendant, using the rates posted in its Rate Sheet, on January 3, 2018.

32. Defendant's corporate offices approved the invoice at a second level of review (following the field approval) by office engineer.

33. However, defendant then denied payment of this invoice.

34. Defendant instead responded to the invoice by demanding a write-down of the invoice, and also demanded substantial, burdensome, and irrelevant information from Directional.

35. Directional made a genuine effort to compromise and settle its claim over the ensuing weeks and months, but defendant has responded only by threatening to audit Directional's past invoices (for items unrelated to lost in hole equipment) and demanding ever more information in an attempt to intimidate Directional from pursuing collections of its valid, field-approved invoice.

36. On February 23, 2018, drilling equipment became stuck in hole in the Jack Unit 2H well.

37. Again, defendant made "fishing" attempts with no success and without requesting input from Directional.

38. Directional field-submitted an invoice for this lost in hole equipment, in accordance with its applicable Rate Sheet, on February 25, 2018.

39. Defendant's field personnel approved this second lost in hole invoice on February 27, 2018.

40. Defendant cemented over the well, plugging the Jack Unit 2H wellbore and preventing Directional from retrieving its equipment, also on February 27, 2018.

41. However, defendant's management has again indicated by words and conduct that it does not intend to pay this invoice, repudiating the parties' agreement.

42. Unable to continue its operations for defendant as a result of defendant's non-payment, Directional exercised its right to terminate the Master Services Agreement by notice given on February 20, 2018. By its terms, the agreement terminated on March 22, 2018.

43. Defendant has continued its tactic of demanding burdensome and irrelevant information from Directional, and has threatened to take other and further action, in a further attempt to discourage Directional from pursuing collection of its invoices.

44. Directional has suffered loss and damage due to defendant's breach and repudiation of the parties' agreement in an amount to be proved at trial.

45. All conditions precedent to the bringing of this action have occurred or have been discharged.

Count I: Breach of contract

46. Directional incorporates its prior allegations as if stated in full herein.

47. The Master Services Agreements, expressly, or alternatively as modified by the parties' conduct and exchange of written documents, and Rate Sheets together formed, at all times relevant to this action, a single, valid, and existing contract between the parties.

48. Directional has fully performed under that contract.

49. By refusing to pay Directional's invoices for its "Work" and/or for the equipment lost-in-hole as discussed herein, defendant has breached the contract.

50. By indicating by words and conduct that it has no intention of paying other invoices, defendant has repudiated the contract.

51. By demanding burdensome and irrelevant information, for no purpose other than to abuse, intimidate, and harass Directional, defendant has breached the duty of good faith and fair dealing implied by the contract.

52. As a result, Directional has been damaged in an amount to be proven at trial.

Count II: Lien foreclosure

53. Directional incorporates its prior allegations as if set forth in full herein.

54. Directional recorded a statutory form Notice of Mechanic's Lien in Tyler County, West Virginia, on March 28, 2018, pertaining to the Jameson 1H well and the appurtenant leasehold estate or estates, as provided by West Virginia Code §§ 38-2-1 (lien of contractor), 38-2-3 (lien of materials supplier), 38-2-4 (lien of equipment supplier), 38-2-5 (lien of mechanic or laborer), 39-2-6 (lien of mechanic or laborer).

55. Defendant has failed or refused to pay the amount of the lien, and Directional has brought no other action in law or equity for the foreclosure thereof.

56. Directional recorded a statutory form Notice of Mechanic's Lien in Tyler County, West Virginia, on April 2, 2018, pertaining to the Jack Unit 1H well and the appurtenant leasehold estate or estates, as provided by West Virginia Code §§ 38-2-1 (lien of contractor), 38-2-3 (lien of materials supplier), 38-2-4 (lien of equipment supplier), 38-2-5 (lien of mechanic or laborer), 39-2-6 (lien of mechanic or laborer).

57. Defendant has failed or refused to pay the amount of the lien and Directional has brought no other action in law or equity for the foreclosure thereof.

58. Directional recorded a statutory form Notice of Mechanic's Lien against Corporation for Work or Labor in Tyler County, West Virginia, on April 11, 2018, pertaining to all real or personal property held by defendant in the State of West Virginia as provided by West Virginia Code § 38-2-31. This lien and the two liens against defendant's individual wells are intended to provide Directional with alternative, and not cumulative, security for the debts defendant owes to Directional.

59. Defendant is the owner of the premises (both the wellbore and leasehold estate) pertaining to all three liens.

60. Directional has no knowledge of any other or subsequent liens or claims against the premises of its three liens.

61. Directional therefore brings this action to enforce and foreclose the liens created by the recorded notices, up to the full amount claimed thereby. Directional is also entitled to a decree that Directional has a valid lien for the principal sum named in the lien notices upon the real property and improvements described in the lien notices, which liens are prior to and superior to the interests of all other creditors of defendant; for foreclosure of said liens, for costs and expert witness fees; and other and further relief.

Count III: Estoppel

62. Directional incorporates its prior allegations as if set forth in full herein.

63. Directional and defendant entered an agreement pursuant to which Directional reasonably believed it would be compensated for the work it performed.

64. Defendant has by its conduct given Directional further and reasonable ground to rely upon the parties' agreement that Directional would be paid according to its Rate Sheet for lost in hole equipment.

65. Directional also reasonably relied upon the fact that payment for such lost in hole equipment is standard practice in the industry, and, upon information and belief, also is standard practice between defendant and all of its other drilling contractors.

66. Relying upon defendant's written agreement and conduct, Directional has performed the work defendant required, and has expended its time, resources, and labor, and suffered loss and damage to its equipment as a result.

67. With defendant's knowledge and approval communicated through the ISN system, Directional did not purchase third-party insurance or take like precautions to protect itself because of its reliance upon the written terms of the agreement it had with defendant, and upon defendant's course of conduct over an approximately 4-year period of time, in addition to previous conduct Mr. Onishenko had experienced.

68. Defendant has received the benefit of Directional's work and seeks to retain that benefit without paying for it.

69. Defendant now seeks to change the terms of the parties' agreement that Directional relied upon, and to withhold payment for that work or even claw back previous payments it has made pursuant to the parties' agreement.

70. Justice and equity should prevent defendant from changing its position in light of Directional's reasonable and detrimental reliance upon not only the written agreement of the parties, but also defendant's course of conduct in performing under that agreement for an extended period.

71. As a result, Directional has been damaged by defendant's conduct in an amount to be proven at trial.

Count IV: Mutual Mistake/Equitable Reformation of Contract

72. Directional incorporates its prior allegations as if set forth in full herein.

73. If the Master Services Agreement and the Rate Sheets are in conflict, neither party was aware of the conflict until January 2018.

74. By this time, defendant had paid Directional's lost in hole invoices on numerous occasions and Directional had reasonably come to rely upon this consistent, intentional course of conduct by defendant.

75. As a result, Directional continued to perform work under the parties' agreement, and continued to place its equipment and livelihood at risk, and agreed to sign a second Master Services Agreement.

76. To avoid injustice, the Court should equitably reform the parties' agreement to eliminate any conflict between the Master Services Agreement and the Rate Sheets, in order to permit Directional to receive the benefits of the agreement that both parties intended for Directional to receive, which is for Directional to be compensated for lost in hole equipment in accordance with its posted rates.

77. Directional is therefore entitled to reformation of the parties' agreement and damages in an amount to be proven at trial.

Count V: Negligent Misrepresentation

78. Directional would not have continued to perform directional drilling services for defendant had it known that the Master Services Agreement and its posted Rate Sheets were in conflict, such that lost in hole invoices would not be paid promptly by defendant.

79. Defendant should have realized the existence of the conflict and called it to Directional's attention before Directional performed such directional drilling services.

80. Instead, defendant by silence led Directional to a false sense of security and reasonable reliance that defendant's continued conduct would conform to its past conduct.

81. Directional therefore reasonably proceeded to continue to perform directional drilling services for defendant, signed a second Master Services Agreement, and continued thereafter to perform without seeking an express modification of the parties' agreement or other protection.

82. As a result, Directional has been damaged in an amount to be proven at trial. Should defendant's conduct be found to be willful, wanton, or attended by circumstances of fraud or malice, defendant is liable to Directional for an award of punitive damages.

WHEREFORE, Directional prays for an order and judgment of this Court awarding Directional its full damages due under the parties' agreement, all relief owing to Directional in law and equity, and its costs, attorneys' fees, interest, and its expert witness fees, in addition to all such further relief as the Court may deem proper.

PLAINTIFF DEMANDS THAT THIS CAUSE BE TRIED BY JURY

Respectfully submitted April 18th 2018.

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**Application for admission pro hac vice to be
submitted**

Attorneys for Directional ONE Services Inc. USA

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DIRECTIONAL ONE SERVICES INC. USA,
a foreign corporation authorized to do business
in the State of West Virginia,

Plaintiff,

v.

Civil Action No.: 18-C-14
(Judge David W. Hummel, Jr.)

ANTERO RESOURCES CORPORATION,
a foreign corporation authorized to do business
in the State of West Virginia,

Defendant.

ANTERO RESOURCES CORPORATION'S ANSWER AND COUNTERCLAIM

A. ANSWER

Antero Resources Corporation ("Antero") for its answer states as follows:

First Defense

The first amended complaint fails to state a claim against Antero Resources Corporation for which relief may be granted.

Second Defense

For its specific responses to the numbered paragraphs in the first amended complaint, Antero Resources Corporation ("Antero") states as follows:

Nature of the Case

1. Antero admits that the plaintiff is an oil and gas directional drilling contractor which has performed directional drilling services for Antero since October 2014. Antero admits that it had a working relationship with Kevin Onishenko's previous company, ARK Directional Services beginning sometime on or around July 2007. Antero admits that it has

refused to pay certain invoices from the plaintiff for lost in hole equipment, but denies that it had any obligation to do so under the Master Services Agreement dated September 30, 2015 ("2015 MSA"), between the parties. Antero is currently without information sufficient to admit or deny the allegations as to the whether Antero has "paid such invoices in the past," and to the extent that the allegation infers that Antero was required to pay such invoices, or that Antero intentionally paid such improper invoices, Antero denies any such allegation. The final allegation contained within paragraph 1 of the first amended complaint is not directed toward Antero and therefore no response is required.

Parties, Jurisdiction, and Venue

2. Antero is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 2 of the first amended complaint.

3. Antero admits the allegations set forth in paragraph 3 of the first amended complaint, except to deny that it is a Colorado corporation.

4. Paragraph 4 of the first amended complaint sets forth legal conclusions to which no response is required.

5. Paragraph 5 of the first amended complaint sets forth legal conclusions to which no response is required.

General Allegations

6. Antero admits that plaintiff has provided directional drilling services to Antero in the states of West Virginia and Ohio since approximately 2014.

7. The allegations contained within paragraph 7 of the first amended complaint are not directed toward Antero and therefore no response is required.

8. The allegations contained within paragraph 8 of the first amended complaint are not directed toward Antero and therefore no response is required. To the extent that a response is required, Antero denies the allegations set forth in paragraph 8 of the first amended complaint.

9. Antero admits the allegations set forth in paragraph 9 of the first amended complaint.

10. Antero admits that the quoted language in paragraph 10 of the first amended complaint is contained within the 2014 Master Services Agreement, but specifically denies that the quoted contract language obligated Antero in any way to pay for lost in hole equipment.

11. Antero is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 11 of the first amended complaint.

12. Antero admits that it drafted the 2014 Master Services Agreement. Antero denies the remaining allegation set forth in paragraph 12 of the first amended complaint.

13. Paragraph 13 of the first amended complaint sets forth legal conclusions to which no response is required.

14. Antero is without knowledge or information sufficient to form a belief as to the truth of the allegation in paragraph 14 of the first amended complaint as it is unsure what, if any, specific Rate Sheets the plaintiff is referencing. To the extent the allegation refers to a specific document, such document speaks for itself and no further response is required.

15. Paragraph 15 of the first amended complaint sets forth legal conclusions to which no response is required. To the extent the allegation refers to a specific document, such

document speaks for itself and no further response is required. To the extent that a response is required, Antero denies the allegations set forth in paragraph 15 of the first amended complaint.

16. Antero admits that Antero employees may have improperly received, mistakenly approved, and mistakenly paid invoices for lost in hole equipment. Antero denies that it was ever obligated to pay such mistaken invoices under the terms of the 2014 Master Services Agreement. Further, Antero denies the remaining allegation set forth in paragraph 16 of the first amended complaint to the extent that it purports to accurately and completely describe Antero's invoicing process.

17. Antero denies the allegations set forth in paragraph 17 of the first amended complaint.

18. Antero denies the allegations set forth in paragraph 18 of the first amended complaint insofar as the ISNetworld system does not track or apply to insurance for equipment lost in hole.

19. Antero denies the allegations set forth in paragraph 19 of the first amended complaint insofar as it relates to insurance for equipment lost in hole.

20. Antero denies the allegations set forth in paragraph 20 of the first amended complaint insofar as it relates to insurance for equipment lost in hole.

21. Antero admits that the parties signed a 2015 Master Services Agreement, which was drafted by Antero. Antero denies the remaining allegation set forth in paragraph 21 of the first amended complaint.

22. Antero admits that the quoted language in paragraph 22 of the first amended complaint is contained within the 2015 Master Services Agreement, but specifically

denies that the quoted contract language obligated Antero in any way to pay for lost in hole equipment.

23. Antero admits that it received additional invoices following the parties' execution of the 2015 Master Services Agreement and that Antero employees may have improperly received, mistakenly approved, and mistakenly paid invoices for lost in hole equipment. Antero denies that it was ever obligated to pay such mistaken invoices under the terms of the 2015 Master Services Agreement.

24. Antero admits that it has paid certain contractors' invoices for certain equipment lost in hole in the past. The final allegation in paragraph 24 of the first amended complaint sets forth a legal conclusion to which no response is required.

25. Antero denies the allegations set forth in paragraph 25 of the first amended complaint.

26. Antero admits the allegations set forth in paragraph 26 of the first amended complaint.

27. Antero admits that equipment got stuck in hole on the Jameson Unit 1H Well, but that it occurred on December 28, 2017.

28. Antero admits that it attempted fishing operations and was unsuccessful. Antero is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 28 of the first amended complaint.

29. Antero is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 29 of the first amended complaint insofar as it alleges that the invoice was based on rates posted in its Rate Sheet. Antero denies that field personnel reviewed and approved this invoice for payment.

30. Antero admits the allegations set forth in paragraph 30 of the first amended complaint.

31. Antero admits that the plaintiff submitted an invoice on January 3, 2018, but is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 31 of the first amended complaint.

32. Antero denies the allegations set forth in paragraph 32 of the first amended complaint.

33. Antero admits the allegations set forth in paragraph 33 of the first amended complaint.

34. Antero admits that it demanded a write-down of the invoice referred to in paragraph 34 of the first amended complaint. Antero admits that it requested certain information related to the invoice as Antero is permitted to do under the 2015 MSA, but Antero denies that the information requested was substantial, burdensome, or irrelevant.

35. Antero denies the allegations set forth in paragraph 35 of the first amended complaint.

36. Antero admits the allegations set forth in paragraph 36 of the first amended complaint.

37. Antero admits that it attempted fishing operations and was unsuccessful. Antero is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 37 of the first amended complaint.

38. Antero admits the allegations set forth in paragraph 38 of the first amended complaint.

39. Antero denies that field personnel review and approve invoices for payment.

40. Antero admits the allegations set forth in paragraph 40 of the first amended complaint.

41. Antero admits that it has indicated that it does not intend to pay the disputed invoice. Antero denies the remaining allegations set forth in paragraph 41 of the first amended complaint.

42. Antero admits that the plaintiff terminated the 2015 MSA by letter dated February 20, 2018, and that the 2015 MSA terminated on March 22, 2018. Antero denies the remaining allegations set forth in paragraph 42 of the first amended complaint.

43. Antero denies the allegations set forth in paragraph 43 of the first amended complaint.

44. Antero denies the allegations set forth in paragraph 44 of the first amended complaint.

45. Paragraph 45 of the first amended complaint asserts legal conclusions and opinions to which no response is required. To the extent a response is required, Antero is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 45 of the first amended complaint.

COUNT I – BREACH OF CONTRACT

46. Antero incorporates its replies to paragraphs 1 through 45 of the first amended complaint as if fully set forth herein.

47. Paragraph 47 of the first amended complaint asserts legal conclusions and opinions to which no response is required. To the extent a response is required, Antero denies the allegations set forth in the paragraph 47 of the first amended complaint.

48. Antero denies the allegations set forth in paragraph 48 of the first amended complaint.

49. Antero denies the allegations set forth in the paragraph 49 of the first amended complaint.

50. Antero denies the allegations set forth in the paragraph 50 of the first amended complaint.

51. Antero denies the allegations set forth in the paragraph 51 of the first amended complaint.

52. Antero denies that it is liable in any amount to the plaintiff.

COUNT II – LIEN FORECLOSURE

53. Antero incorporates its replies to paragraphs 1 through 52 of the first amended complaint as if fully set forth herein.

54. Paragraph 54 of the first amended complaint sets forth legal conclusions to which no response is required.

55. Antero admits that it has not paid the lien amount. Antero is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 55 of the first amended complaint.

56. Paragraph 56 of the first amended complaint sets forth legal conclusions to which no response is required.

57. Antero admits that it has not paid the lien amount. Antero is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 57 of the first amended complaint.

58. Paragraph 58 of the first amended complaint sets forth legal conclusions to which no response is required.

59. Antero admits the allegations set forth in paragraph 59 of the first amended complaint.

60. The allegations contained within paragraph 60 of the first amended complaint are not directed toward Antero and therefore no response is required.

61. Paragraph 61 of the first amended complaint asserts legal conclusions and opinions to which no response is required. To the extent a response is required, Antero denies the allegations set forth in the paragraph 61 of the first amended complaint.

COUNT III – ESTOPPEL

62. Antero incorporates its replies to paragraphs 1 through 61 of the first amended complaint as if fully set forth herein.

63. The allegations contained within paragraph 63 of the first amended complaint are not directed toward Antero and therefore no response is required.

64. Antero denies the allegations set forth in paragraph 64 of the first amended complaint.

65. Antero denies the allegations set forth in paragraph 65 of the first amended complaint.

66. Antero denies the allegations set forth in paragraph 66 of the first amended complaint.

67. Antero is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 67 of the first amended complaint.

68. Antero denies the allegations set forth in paragraph 68 of the first amended complaint.

69. Antero denies the allegations set forth in paragraph 69 of the first amended complaint.

70. Paragraph 70 of the first amended complaint asserts legal conclusions and opinions to which no response is required. To the extent a response is required, Antero denies the allegations set forth in paragraph 70 of the first amended complaint.

71. Antero denies that it is liable in any amount to the plaintiff.

COUNT IV – MUTUAL MISTAKE/EQUITABLE REFORMATION OF CONTRACT

72. Antero incorporates its replies to paragraphs 1 through 71 of the first amended complaint as if fully set forth herein.

73. Antero denies the allegations set forth in paragraph 73 of the first amended complaint.

74. Antero is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 74 of the first amended complaint. To the extent that the allegations infer that Antero intentionally paid improper invoices, Antero denies the allegations in paragraph 74 of the first amended complaint.

75. Antero denies the allegations set forth in paragraph 75 of the first amended complaint.

76. Paragraph 76 of the first amended complaint asserts legal conclusions and opinions to which no response is required. To the extent a response is required, Antero denies the allegations set forth in the paragraph 76 of the first amended complaint.

77. Paragraph 77 of the first amended complaint asserts legal conclusions and opinions to which no response is required. To the extent a response is required, Antero denies the allegations set forth in the paragraph 77 of the first amended complaint.

COUNT V – NEGLIGENT MISREPRESENTATION

78. The allegations contained in paragraph 78 of the first amended complaint are not directed toward Antero and therefore no response is required.

79. Antero denies the allegations set forth in paragraph 79 of the first amended complaint.

80. Antero denies the allegations set forth in paragraph 80 of the first amended complaint.

81. Antero denies the allegations set forth in paragraph 81 of the first amended complaint.

82. Antero denies the allegations set forth in paragraph 82 of the first amended complaint.

83. Antero denies each and every allegation of the first amended complaint not specifically admitted herein.

84. Antero denies that it is liable in any amount to the plaintiff.

Third Defense

All or a portion of the plaintiff's claim may be barred by the applicable statute of limitations.

Fourth Defense

All or a portion of the plaintiff's claim may be barred by the doctrine of laches.

Fifth Defense

The first amended complaint, to the extent that it seeks punitive damages, violates Antero's rights to procedural due process under the 14th Amendment of the United States Constitution and the Constitution of the State of West Virginia and, therefore, fails to state a cause of action upon which punitive damages can be awarded.

Sixth Defense

The first amended complaint, to the extent that it seeks punitive damages, violates Antero's rights to protection from "excessive fines" as provided in the 8th Amendment of the United States Constitution and Article 3, Section V of the Constitution of the State of West Virginia and violates the Antero's rights to substantive due process as provided in the 5th and 14th Amendments of the United States Constitution and the Constitution of the State of West Virginia and, therefore, fails to state a cause of action supporting the punitive damages claim.

Seventh Defense

The first amended complaint fails to state a cause of action upon which punitive or exemplary damages can be awarded.

Eighth Defense

The first amended complaint fails to state a cause of action upon which attorneys' fees or experts' fees are recoverable.

Ninth Defense

Antero properly and lawfully refused to pay for the plaintiff's lost property as Antero is not required to pay for such property under the Master Services Agreement dated September 30, 2015.

Tenth Defense

The plaintiff's claims are barred by the West Virginia statute of frauds.

Eleventh Defense

The plaintiff's claims are barred by failure of consideration.

Twelfth Defense

The plaintiff's claim for specific performance is barred by its failure to tender or offer to tender the consideration required by the alleged agreement.

Thirteenth Defense

The plaintiff's claim for detrimental reliance is barred by plaintiff's failure to allege facts sufficient to support its claim.

Fourteenth Defense

The plaintiff's claim for detrimental reliance is barred by plaintiff's failure to allege any misrepresentation or concealment of material facts and any prejudice after relying or acting upon any representation or concealment.

Fifteenth Defense

The plaintiff's claims are barred where Antero made no false or misleading representations.

WHEREFORE, Antero Resources Corporation prays that this Court dismiss the plaintiff's first amended complaint in its entirety with prejudice, award Antero its costs

associated with this first amended complaint, and grant Antero such other and further relief as the Court deems appropriate.

B. ANTERO RESOURCES CORPORATION'S COUNTERCLAIM

For its counterclaim against Directional One Services Inc. USA ("Directional"), Antero Resources Corporation ("Antero") states as follows:

PARTIES

1. Plaintiff, Antero, is a Delaware corporation with its principal place of business in Colorado.
2. Defendant, Directional One, is a Colorado corporation with its principal place of business in Ohio.

JURISDICTION

3. Subject matter jurisdiction and personal jurisdiction are proper in this Court because the claims arise out of West Virginia common law and Directional performed business and construction activities in West Virginia and committed breaches of contract in West Virginia.

VENUE

4. Venue in this Court is proper because Directional committed the breaches of contract in Tyler County, West Virginia.

FACTS

5. Antero is a Denver-based company with a regional office in Bridgeport, West Virginia that produces natural gas and related products in the Appalachian Basin.

6. Directional is a Colorado corporation that provides directional drilling services to oil-and-gas producers.

7. Antero and Directional entered into Master Services Agreements dated August 29, 2014, and September 30, 2015. The agreements are substantially identical. A copy of the 2015 agreement (the "MSA") is attached hereto as "Exhibit A."

8. The MSA is a contract between Antero and Directional and controlled the relationship between the parties at all relevant times.

9. Pursuant to the MSA, Antero engaged Directional to provide directional drilling services for several Antero wells in the Utica and Marcellus shales. Directional submitted invoices, which Antero timely paid, with the exception of two recent "Lost In Hole" invoices that are the subject of Directional's claim against Antero.

10. "Lost In Hole" charges concern property damage or loss to Directional's tools and/or equipment that become stuck in a wellbore (underground) during drilling operations and cannot be retrieved.

11. Prior to the two invoices that Antero disputed, Directional had previously billed Antero for Lost In Hole charges on invoices that Antero mistakenly paid in full.

12. In addition, Directional charged Antero for "repair" charges for repairs and refurbishment of Directional tools that were allegedly damaged during drilling operations on Antero wells. Antero mistakenly paid these charges in full.

13. The MSA allocates to Directional all costs related to loss of or damage to its property, including its tools. Specifically, section 13.3 holds Directional responsible for the "loss, damage, or destruction of [Directional's] property:"

13.3. Contractor's General Indemnity. Contractor [Directional] shall release, protect, defend, indemnify, and hold harmless

Company Group [Antero] from and against any and all Claims arising out of or related to: . . . (ii) the damage to or loss of property of, any member of Contractor Group [Plaintiff].”

14. As a result, Directional should not have charged Antero for repairs to its equipment or for Lost In Hole charges resulting from its damaged or lost equipment. In both instances, Directional is responsible under the MSA for the damage to or loss of Directional’s property.

15. In addition, Directional charged Antero for Lost In Hole “insurance” that would purportedly reduce the Lost In Hole, property-damage charge for “insured” equipment. Directional did not provide or purchase true insurance for its equipment.

16. However, because Antero was not responsible under the MSA for Lost In Hole equipment, it had no need for such Lost In Hole “insurance.” Thus, Directional erroneously charged Antero Lost In Hole insurance that it knew was unnecessary and was not permitted under the terms of the MSA.

17. Antero mistakenly paid Directional’s invoices with Lost In Hole charges, Lost In Hole insurance charges, and repair charges (with the exception of the two disputed invoices).

18. Section 10.7 of the MSA provides that, “Payment by [Antero] of any invoice (even if disputed) shall be without prejudice and shall not constitute a waiver of [Antero’s] right subsequently to question or to contest the amount or correctness of said invoice and to seek reimbursement.” The MSA thus permits Antero to seek reimbursement from Directional for Antero’s payment of Lost In Hole, Lost In Hole insurance, and repair charges for which Antero was not responsible.

19. Directional also charged Antero day rates for its workers and equipment on Antero well sites. Over the life of the Antero-Directional relationship, Directional charged

Antero more than \$1 million in stand-by charges under circumstances in which the MSA disallows such charges.

COUNT ONE – Breach of Contract for Lost In Hole Charges

20. The allegations of paragraphs 1-19 are incorporated as if restated herein.

21. The elements of breach of contract are (1) the existence of a contract between the parties; (2) a party's failure to comply with a term in the contract; and (3) damages arising from the breach.

22. The MSA is the contract between the parties. Under that contract, Directional is responsible for the costs of repairing or replacing its lost or damaged property. Directional thus breached the MSA by billing Antero for Lost In Hole charges and accepting payment of those invoices. Pursuant to the MSA, Antero is entitled to recover as damages for Directional's breach of contract \$1,252,543.00 for Lost In Hole charges that Antero paid to Directional.

COUNT TWO – Breach of Contract for Lost In Hole Insurance Charges

23. The allegations of paragraphs 1-22 are incorporated as if restated herein, including the elements of a breach of contract in paragraph 21.

24. The MSA is the contract between the parties. Under the MSA, Directional is responsible for the costs of repairing or replacing all of its damaged or lost property. Directional thus breached the MSA by billing Antero for Lost In Hole insurance charges for equipment for which Antero was not responsible and accepting payment of those invoices. Pursuant to the MSA, Antero is entitled to recover as damages \$1,350,000.00 in Lost In Hole insurance charges that Antero paid to Directional.

COUNT THREE – Breach of Contract for Repair Charges

25. The allegations of paragraphs 1-24 are incorporated as if restated herein, including the elements of a breach of contract in paragraph 21.

26. The MSA is the contract between the parties. Under the MSA, Directional is responsible for the costs of replacing or repairing all of its lost and damaged property. Directional thus breached the MSA by billing Antero for repairs to Directional's tools for which Antero was not responsible and by accepting payment of those invoices. Pursuant to the MSA, Antero is entitled to recover as damages the amount of repair charges that Antero paid to Directional.

COUNT FOUR – Breach of Contract for Day-Rate and Standby Charges

27. The allegations of paragraphs 1-26 are incorporated as if restated herein, including the elements of a breach of contract in paragraph 21.

28. The MSA is the contract between the parties. Under the MSA, Directional may only bill Antero for work that was actually performed. Because Directional charged Antero for time that its employees or equipment were not actually engaged in an Antero project or were not actually being kept on standby by Antero, Antero is entitled to recover as damages the amounts in day-rate and standby charges that Antero paid to Directional.

WHEREFORE, Antero Resources Corporation requests judgment be entered for Antero Resources Corporation and against Directional One Services Inc. USA, awarding all damages, attorney's fees, pre- and post-judgment interest, equitable relief, and any other relief to which Antero may be entitled.



W. Henry Lawrence (WV Bar #2156)

John D. Pizzo (WV Bar #12680)

Eric M. DiVito (WV Bar #12890)

Steptoe & Johnson PLLC

400 White Oaks Boulevard

Bridgeport, WV 26330

(304) 933-8000


Attorneys for Antero Resources Corporation

CERTIFICATE OF SERVICE

I hereby certify that on the 1st of August 2018, I served the foregoing "Antero Resources Corporation's Answer and Counterclaim" upon counsel of record by depositing true copies thereof in the United States mail, postage prepaid, in envelopes addressed as follows:

Sean P. McGinley, Esquire
DiTrapano Barrett DiPiero
McGinley & Simmons, PLLC
P.O. Box 1631
Charleston, WV 25326-1631

Christopher Kamper, Esquire
Carver Schwarz McNab Kamper & Forbes, LLC
1888 Sherman Street, Suite 400
Denver, CO 80203



IN THE CIRCUIT COURT OF TYLER COUNTY, WEST VIRGINIA

DIRECTIONAL ONE SERVICES INC. USA,
a foreign corporation authorized to do business
in the State of West Virginia,

Plaintiff,

v.

CIVIL ACTION NO: 18-C-14
(Hon. David W. Hummel, Jr., Judge)

ANTERO RESOURCES CORPORATION,
a foreign corporation authorized to do business
in the State of West Virginia,

Defendant.

PLAINTIFF'S REPLY TO DEFENDANT'S COUNTERCLAIMS

Plaintiff Directional One Services Inc. USA ("DirectionalOne"), through its undersigned counsel, for its Reply to Defendant's Counterclaims, states as follows:

ANSWER TO PARTIES

1. *Plaintiff, Antero, is a Delaware corporation with its principal place of business in Colorado.*

Response To Paragraph 1: Admit.

2. *Defendant, Directional One, is a Colorado corporation with its principal place of business in Ohio.*

Response to Paragraph 2: Since the commencement of this action, DirectionalOne's principal place of business has moved to Farmington, New Mexico. It remains a Colorado corporation.

ANSWER TO JURISDICTION

3. *Subject matter jurisdiction and personal jurisdiction are proper in this Court because the claims arise out of West Virginia common law and Directional performed business and construction activities in West Virginia and committed breaches of contract in West Virginia.*

Response to Paragraph 3: DirectionalOne does not contest jurisdiction, and denies the allegations of paragraph 3.

ANSWER TO VENUE

4. *Venue in this Court is proper because Directional committed the breaches of contract in Tyler County, West Virginia.*

Response to Paragraph 4: DirectionalOne does not contest venue, and denies the allegations of paragraph 4.

ANSWER TO FACTS

5. *Antero is a Denver-based company with a regional office in Bridgeport, West Virginia that produces natural gas and related products in the Appalachian Basin.*

Response To Paragraph 5: Admit.

6. *Directional is a Colorado corporation that provides directional drilling services to oil-and-gas producers.*

Response To Paragraph 6: Admit.

7. *Antero and Directional entered into Master Services Agreements dated August 29, 2014, and September 30, 2015. The agreements are substantially identical. A copy of the 2015 agreement (the "MSA") is attached hereto as "Exhibit A."*

Response To Paragraph 7: Admit. In addition, the parties' agreement also included DirectionalOne's rate sheets, which it submitted and defendant approved from time to time (the "Rate Sheets," together with the MSAs, the "Agreement").

8. *The MSA is a contract between Antero and Directional and controlled the relationship between the parties at all relevant times.*

Response To Paragraph 8: Deny. The Agreement controlled the parties' relationship, as demonstrated by the parties' course of performance under that Agreement consistent with industry standard practice.

9. *Pursuant to the MSA, Antero engaged Directional to provide directional drilling services for several Antero wells in the Utica and Marcellus shales. Directional submitted invoices, which Antero timely paid, with the exception of two recent "Lost In Hole" invoices that are the subject of Directional's claim against Antero.*

Response To Paragraph 9: DirectionalOne denies that it was engaged pursuant to the MSA. The Work was performed pursuant to the parties' Agreement. DirectionalOne admits the balance of the allegations of Paragraph 9.

10. *"Lost In Hole" charges concern property damage or loss to Directional's tools and/or equipment that become stuck in a wellbore (underground) during drilling operations and cannot be retrieved.*

Response To Paragraph 10: Deny. DirectionalOne admits that Lost in Hole charges relate to tools and/or equipment that become stuck in a wellbore, however DirectionalOne denies the implication that insurance principles govern the issue of Lost in Hole charges, which are rather a matter of the contract between the parties. Lost in Hole tools and equipment constitute "Work" that is "provided" to defendant

pursuant to the plain terms of the parties' Agreement. Whether or not to attempt to retrieve tools stuck in hole, and how long to continue such attempts, is a decision driven in large part by economics, and was made by defendant alone and not by DirectionalOne.

11. *Prior to the two invoices that Antero disputed, Directional had previously billed Antero for Lost In Hole charges on invoices that Antero mistakenly paid in full.*

Response To Paragraph 11: DirectionalOne states that as a matter of the parties' regular, consistent, and undisputed course of performance and the terms of their Agreement, it charged defendant for Lost in Hole tools, and that defendant paid such bills until January 2018. DirectionalOne denies any allegations of paragraph 12 inconsistent with the foregoing statement.

12. *In addition, Directional charged Antero for "repair" charges for repairs and refurbishment of Directional tools that were allegedly damaged during drilling operations on Antero wells. Antero mistakenly paid these charges in full.*

Response To Paragraph 12: DirectionalOne states that as a matter of the parties' regular, consistent, and undisputed course of performance and the terms of their Agreement, it charged defendant for repair costs for damaged tools, and that defendant paid such bills. DirectionalOne denies any allegations of paragraph 12 that are inconsistent with the foregoing statement.

13. *The MSA allocates to Directional all costs related to loss of or damage to its property, including its tools. Specifically, section 13.3 holds Directional responsible for the "loss, damage, or destruction of [Directional's] property: "13.3. Contractor's General Indemnity, Contractor [Directional] shall release, protect, defend, indemnify, and hold harmless*

Company Group [Antero] from and against any and all Claims arising out of or related to: . . .

(ii) the damage to or loss of property of, any member of Contractor Group [Plaintiff]."

Response To Paragraph 13: Paragraph 13 expresses only erroneous legal conclusions and not allegations of fact, and DirectionalOne denies them on that basis.

14. *As a result, Directional should not have charged Antero for repairs to its equipment or for Lost In Hole charges resulting from its damaged or lost equipment. In both instances, Directional is responsible under the MSA for the damage to or loss of Directional's property.*

Response To Paragraph 14: Paragraph 14 expresses only erroneous legal conclusions and not allegations of fact, and DirectionalOne denies them on that basis.

15. *In addition, Directional charged Antero for Lost In Hole "insurance" that would purportedly reduce the Lost In Hole, property-damage charge for "insured" equipment. Directional did not provide or purchase true insurance for its equipment.*

Response To Paragraph 15: DirectionalOne states that, as per standard industry practice, DirectionalOne offered defendant a Lost in Hole insurance option when and only when defendant specifically and expressly requested it, and that this billing option is not and does not purport to be a third-party insurance arrangement. DirectionalOne denies any allegations of Paragraph 15 inconsistent with the foregoing statement.

16. *However, because Antero was not responsible under the MSA for Lost In Hole equipment, it had no need for such Lost In Hole "insurance." Thus, Directional erroneously charged Antero Lost In Hole insurance that it knew was unnecessary and was not permitted under the terms of the MSA.*

Response To Paragraph 16: Deny. DirectionalOne offered defendant a Lost in Hole insurance option when and only when Antero specifically and expressly requested it, thus there was no "error" by either party. If defendant purchased "insurance" it did not "need," that is not DirectionalOne's responsibility.

17. *Antero mistakenly paid Directional's invoices with Lost In Hole charges, Lost In Hole insurance charges, and repair charges (with the exception of the two disputed invoices).*

Response To Paragraph 17: Deny.

18. *Section 10.7 of the MSA provides that, "Payment by [Antero] of any invoice (even if disputed) shall be without prejudice and shall not constitute a waiver of [Antero's] right subsequently to question or to contest the amount or correctness of said invoice and to seek reimbursement." The MSA thus permits Antero to seek reimbursement from Directional for Antero's payment of Lost In Hole, Lost In Hole insurance, and repair charges for which Antero was not responsible.*

Response To Paragraph 18: Paragraph 18 expresses only erroneous legal conclusions and not allegations of fact, and DirectionalOne denies them on that basis.

19. *Directional also charged Antero day rates for its workers and equipment on Antero well sites. Over the life of the Antero-Directional relationship, Directional charged Antero more than \$1 million in stand-by charges under circumstances in which the MS[A] disallows such charges.*

Response To Paragraph 19: DirectionalOne admits that each and every standby charge occurred in response to an express and specific request from defendant and that DirectionalOne's personnel and equipment were at defendant's disposal at all such

times. The remainder of Paragraph 19 expresses only erroneous legal conclusions and not allegations of fact, and DirectionalOne denies them on that basis.

ANSWER TO COUNT ONE —
Breach Of Contract For Lost In Hole Charges

20. *The allegations of paragraphs 1-19 are incorporated as if restated herein.*

Response To Paragraph 20: DirectionalOne incorporates its prior responses.

21. *The elements of breach of contract are (1) the existence of a contract between the parties; (2) a party's failure to comply with a term in the contract; and (3) damages arising from the breach.*

Response To Paragraph 21: Paragraph 21 contains only legal conclusions and not allegations of fact, and DirectionalOne accordingly does not respond.

22. *The MSA is the contract between the parties. Under that contract, Directional is responsible for the costs of repairing or replacing its lost or damaged property. Directional thus breached the MSA by billing Antero for Lost In Hole charges and accepting payment of those invoices. Pursuant to the MSA, Antero is entitled to recover as damages for Directional's breach of contract \$1,252,543.00 for Lost In Hole charges that Antero paid to Directional.*

Response To Paragraph 22: Paragraph 22 contains only erroneous legal conclusions and not allegations of fact, and DirectionalOne denies them on that basis.

DirectionalOne denies that defendant is entitled to any damages.

ANSWER TO COUNT TWO —
Breach Of Contract For Lost In Hole Insurance Charges

23. *The allegations of paragraphs 1-22 are incorporated as if restated herein, including the elements of a breach of contract in paragraph 21.*

Response To Paragraph 23: DirectionalOne incorporates its prior responses.

24. *The MSA is the contract between the parties. Under the MSA, Directional is responsible for the costs of repairing or replacing all of its damaged or lost property. Directional thus breached the MSA by billing Antero for Lost In Hole insurance charges for equipment for which Antero was not responsible and accepting payment of those invoices. Pursuant to the MSA, Antero is entitled to recover as damages \$1,350,000.00 in Lost In Hole insurance charges that Antero paid to Directional.*

Response To Paragraph 24: Paragraph 24 contains only erroneous legal conclusions and not allegations of fact, and DirectionalOne denies them on that basis.

DirectionalOne denies that defendant is entitled to any damages.

ANSWER TO COUNT THREE —
Breach Of Contract For Repair Charges

25. *The allegations of paragraphs 1-24 are incorporated as if restated herein, including the elements of a breach of contract in paragraph 21.*

Response To Paragraph 25: DirectionalOne incorporates its prior responses.

26. *The MSA is the contract between the parties. Under the MSA, Directional is responsible for the costs of replacing or repairing all of its lost and damaged property. Directional thus breached the MSA by billing Antero for repairs to Directional's tools for which Antero was not responsible and by accepting payment of those invoices. Pursuant to the MSA, Antero is entitled to recover as damages the amount of repair charges that Antero paid to Directional.*

Response To Paragraph 26: Paragraph 26 contains only erroneous legal conclusions and not allegations of fact, and DirectionalOne denies them on that basis.

DirectionalOne denies that defendant is entitled to any damages.

ANSWER TO COUNT FOUR —
Breach Of Contract For Day-Rate And Standby Charges

27. *The allegations of paragraphs 1-26 are incorporated as if restated herein, including the elements of a breach of contract in paragraph 21.*

Response To Paragraph 27: DirectionalOne incorporates its prior responses.

28. *The MSA is the contract between the parties. Under the MSA, Directional may only bill Antero for work that was actually performed. Because Directional charged Antero for time that its employees or equipment were not actually engaged in an Antero project or were not actually being kept on standby by Antero, Antero is entitled to recover as damages the amounts in day-rate and standby charges that Antero paid to Directional.*

Response To Paragraph 28: Paragraph 28 contains only erroneous legal conclusions and not allegations of fact, and DirectionalOne denies them on that basis.

DirectionalOne denies that defendant is entitled to any damages.

Any allegation not specifically and expressly admitted above is denied.

AFFIRMATIVE DEFENSES

1. Antero's counterclaims fail to state a claim upon which relief can be granted.
2. Defendant's assertion of its counterclaims is in breach of § 10.6 of the MSA.
3. Defendant's counterclaims are asserted in breach of its duty of good faith and fair dealing under the parties' Agreement.
4. Defendant's counterclaims are barred or limited by applicable statutes of limitations.
5. Defendant's counterclaims are barred or limited by equitable estoppel, laches, waiver, or unclean hands.

6. The conduct that Defendant alleges in its counterclaims constitutes definitive course of performance evidence as to the meaning of the parties' Agreement, and therefore was not "mistaken" as a matter of law.

7. If Defendant's conduct was mistaken, it establishes mutual mistake of the parties and DirectionalOne is entitled to equitable reformation of the contract in light of its reasonable reliance upon Defendant's conduct.

8. The conduct that Defendant alleges in its counterclaims constitutes deception by Defendant setting up an equitable estoppel against Defendant.

9. Defendant's counterclaims are barred or limited by its own fraud in the inducement and/or negligent misrepresentation.

10. Defendant's counterclaims are barred or limited by novation, accord and satisfaction, or other theory of contract modification.

WHEREFORE, having fully answered the Counterclaims, DirectionalOne respectfully requests that this Court dismiss the Counterclaims, order that defendant take nothing thereby, award DirectionalOne its reasonable costs and attorneys fees incurred in responding to the Counterclaims, and grant such other and further relief as the Court deems just and proper.

Respectfully submitted August 22, 2018.

Carver Schwarz, McNabb Kamper & Forbes, LLC

By: 
Christopher Kamper, pro hac vice

1888 Sherman Street, Suite 400

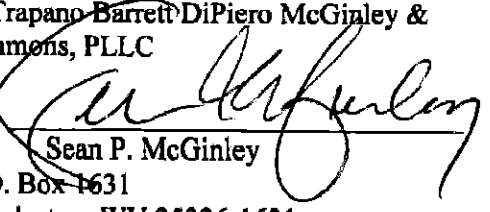
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Attorneys for Directional ONE Services Inc. USA

IN THE CIRCUIT COURT OF TYLER COUNTY, WEST VIRGINIA

DIRECTIONAL ONE SERVICES INC. USA,
a foreign corporation authorized to do business
in the State of West Virginia,

Plaintiff,

v.

CIVIL ACTION NO: 18-C-14
(Hon. David W. Hummel, Jr., Judge)

ANTERO RESOURCES CORPORATION,
a foreign corporation authorized to do business
in the State of West Virginia,

Defendant.

CERTIFICATE OF SERVICE

PLAINTIFF'S REPLY TO DEFENDANT'S COUNTERCLAIMS

The undersigned certifies that Plaintiff served the foregoing to Defendant on August 22, 2018 by U.S. Mail and by email sent to the following:

W. Henry Lawrence
John D. Pizzo
Eric M. DiVito
Steptoe & Johnson PLLC
400 White Oaks Boulevard
Bridgeport, WV 26330
Hank.Lawrence@Steptoe-Johnson.com

By: _____



CASE#: 18-C-14

Sub Code:

Date Opened: 04/09/2018

01/05

JUDGE: DAVID W. HUMMEL, JR.

Date Printed: 12/21/2018

Plaintiff: DIRECTIONAL ONE SERVICES INC. USA

VS

Defendant: ANTERO RESOURCES CORPORATION

Pro Attorney: SEAN MCGINLEY

Def Attorney:

Page Date Memorandum

1	04/06/2018	F: CCIS FILED BY ATTY SEAN MCGINLEY	Account#	Earned	Collected	Balance
2	04/06/2018	F: COMPLAINT W/JURY DEMAND		200.00	200.00	.00
3	04/06/2018	F: PLA'S 1ST SET OF DISCOVERY REQS TO DEF		.00	.00	.00
4	04/09/2018	I: SUMM W/COMPLAINT & DISCOVERY REQS RETURNED TO ATTY MCGINLEY FOR SERV THRU WVSOS		.00	.00	.00
5	04/09/2018	F: ATTY MCGINLEY'S MTN FOR ADMISSION PRO HAC VICE W/ATTY CHRISTOPHER KAMPER'S VERIFIED APPLICATION FOR ADMISSION PRO HAC VICE & PROPOSED ORD		.00	.00	.00
6	04/19/2018	F: CCIS FOR AMENDED COMPLAINT *****NO SERVICE @ THIS TIME*****		.00	.00	.00
7	04/19/2018	F: 1ST AMENDED COMPLAINT W/JURY DEMAND		.00	.00	.00
8	04/19/2018	E: ORD-FOR ADMISSION PRO HAC VICE. CC TO MCGINLEY & KAMPER		.00	.00	.00
9	04/24/2018	F: DISCOVERY, SUMM & COMPLAINT FOR ANTERO RESOURCES CORPORATION		.00	.00	.00
10	04/27/2018	ACCEPTED FOR SERV OF PROCESS BY WVSOS ON 4/20/18		.00	.00	.00
11	05/02/2018	I:3 ORIGINAL SUMMONS TO LEIGH ANNE KIRK @ DITRAPANO BARRETT DIPIERO MCGINLEY & SIMMONS, PLLC IN THEIR SELF-ADDRESSED STAMPED ENVELOPE		.00	.00	.00
12	05/02/2018	FOR ANTERO RESOURCES CORPORATION, A FOREIGN CORPORATION AUTHORIZED TO DO BUSINESS IN THE STATE OF WEST VIRGINIA, C/O CORPORATION SERVICE COMPANY, 5400 D BIG TYLER ROAD, CHARLESTON, WV 25313		.00	.00	.00
13	05/04/2018	F:WV SECRETARY OF STATE DEFENDANT DETAILS SHOWING SERVICE ON ANTERO RESOURCES CORPORATION ON 4/25/2018		.00	.00	.00
14	05/07/2018	I:SERVICE POSTCARD TO ATTY MCGINLEY		.00	.00	.00
15	05/16/2018	F:WV SECRETARY OF STATE'S ACCEPTANCE OF SERVICE ON BEHALF OF ANTERO RESOURCES ON 5/11/2018		.00	.00	.00
16	05/16/2018	I:DOCKET REPORT FAXED TO S&J	1012	2.00	2.00	.00

CIRCUIT CLERK

3047584008

15: 41

12/21/2018

Ex. D

CASE#: 18-C-14

JUDGE: DAVID W. HUMMEL, JR.

Plaintiff: **DIRECTIONAL ONE SERVICES INC. USA**

Defendant: **ANTERO RESOURCES CORPORATION**

Pro Attorney: SEAN MCGINLEY

Def Attorney:

<u>Page</u>	<u>Date</u>	<u>Memorandum</u>	<u>Account#</u>	<u>Earned</u>	<u>Collected</u>	<u>Balance</u>
25	05/24/2018	F:WV SECRETARY OF STATE'S DEFENDANT DETAILS SHOWING 2ND SERVICE ON		.00	.00	.00
26	05/24/2018	ANTERO RESOURCES CORPORATION ON 5/16/2018		.00	.00	.00
27	05/29/2018	I:SERVICE POSTCARD TO ATTY MCGINLEY		.00	.00	.00
28	06/19/2018	F:CIVIL CASE INFORMATION STATEMENT		.00	.00	.00
29	06/19/2018	F:ANTERO RESOURCES CORPORATION'S MOTION TO DISMISS PLAINTIFF'S FIRST		.00	.00	.00
30	06/19/2018	AMENDED COMPLAINT AND MEMO IN SUPPORT WITH EXHIBITS		.00	.00	.00
31	06/19/2018	F:ANTERO RESOURCES CORPORATION'S MOTION TO STAY DISCOVERY PENDING		.00	.00	.00
32	06/19/2018	RULING ON MOTION TO DISMISS		.00	.00	.00
33	06/19/2018	F:CERTIFICATE OF SERVICE FOR ANTERO RESOURCES COPORATION'S RESPONSE		.00	.00	.00
34	06/19/2018	TO PLAINTIFF'S FIRST SET OF DISCOVERY REQUESTS		.00	.00	.00
35	07/18/2018	E:ORDER DENYING ANTERO RESOURCES CORPORATION'S MOTION TO DISMISS		.00	.00	.00
36	07/18/2018	PLAINTIFF'S FIRST AMENDED COMPLAINT; CC TO MCGINLEY, KAMPER &		.00	.00	.00
37	07/18/2018	LAWRENCE	2065	.00	.00	.00
38	08/03/2018	F:ANTERO RESOURCES CORPORATION'S ANSWER AND COUNTERCLAIM		200.00	200.00	.00
39	08/06/2018	F:CERTIFICATE OF SERVICE FOR PLAINTIFF'S SECOND SET OF DISCOVERY		.00	.00	.00
40	08/06/2018	REQUESTS TO DEFENDANT		.00	.00	.00
41	08/13/2018	F:DIRECTIONAL ONE SERVICES INC. USA'S MOTION TO COMPEL W/ EXH 1 THRU 4		.00	.00	.00
42	08/24/2018	F:PLAINTIFF'S REPLY TO DEFENDANT'S COUNTERCLAIMS		.00	.00	.00
43	08/27/2018	F:CERTIFICATE OF SERVICE FOR ANTERO RESOURCES CORPORATION'S		.00	.00	.00
44	08/27/2018	SUPPLEMENTAL RESPONSE TO PLAINTIFF'S FIRST SET OF DISCOVERY		.00	.00	.00
45	08/27/2018	REQUESTS		.00	.00	.00
46	09/06/2018	F:CERTIFICATE OF SERVICE FOR ANTERO RESOURCES CORPORATION'S RESPONSE		.00	.00	.00
47	09/06/2018	TO PLAINTIFF'S SECOND SET OF DISCOVERY REQUESTS		.00	.00	.00
48	09/07/2018	E:AGREED PROTECTIVE ORDER: CC TO MCGINLEY, KAMPER & LAWRENCE		.00	.00	.00

JUDGE: DAVID W. HUMMEL, JR.

Plaintiff: DIRECTIONAL ONE SERVICES INC. USA

Defendant: **ANTERO RESOURCES CORPORATION**

Pro Attorney: SEAN MCGINLEY

Def Attorney:

<u>Page</u>	<u>Date</u>	<u>Memorandum</u>	<u>Account#</u>	<u>Earned</u>	<u>Collected</u>	<u>Balance</u>
49	09/10/2018	F: CERTIFICATE OF SERVICE FOR PLAINTIFF'S RESPONSES AND OBJECTIONS TO		.00	.00	.00
50	09/10/2018	ANTERO RESOURCES CORPORATION'S FIRST SET OF INTERROGATORIES AND		.00	.00	.00
51	09/10/2018	REQUESTS FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF		.00	.00	.00
52	09/14/2018	F: CERTIFICATE OF SERVICE FOR ANTERO RESOURCES CORPORATION'S SECOND		.00	.00	.00
53	09/14/2018	SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS		.00	.00	.00
54	09/14/2018	TO PLAINTIFF		.00	.00	.00
55	09/14/2018	F: LETTER FROM LAWRENCE TO JUDGE RE INTENTION TO OPPOSE MOTION TO		.00	.00	.00
56	09/14/2018	COMPEL		.00	.00	.00
57	09/19/2018	F: CERTIFICATE OF SERVICE FOR PLAINTIFF'S THIRD SET OF DISCOVERY		.00	.00	.00
58	09/19/2018	REQUESTS TO DEFENDANT		.00	.00	.00
59	09/19/2018	F: NOTICE OF DEPOSITION - JON BLACK		.00	.00	.00
60	10/01/2018	F: NOTICES OF DEPOSITIONS OF JOE HONEYCUTT, JAMES HARVEY & JONAH FRYMAN		.00	.00	.00
61	10/10/2018	I: FAXED DOCKET REPORT TO S&J	1012	6.00	6.00	.00
62	10/10/2018	I: FAXED ORDER FOR ADMISSION PRO HAC VICE TO S&J	1012	2.00	2.00	.00
63	10/11/2018	F: CERTIFICATE OF SERVICE FOR ANTERO RESOURCES CORPORATION'S SECOND		.00	.00	.00
64	10/11/2018	SUPPLEMENTAL RESPONSE TO PLAINTIFF'S FIRST SET OF DISCOVERY		.00	.00	.00
65	10/11/2018	REQUESTS		.00	.00	.00
66	10/17/2018	F: CERTIFICATE OF SERVICE FOR PLAINTIFF'S RESPONSES AND OBJECTIONS TO		.00	.00	.00
67	10/17/2018	ANTERO RESOURCES CORPORATION'S SECOND SET OF INTERROGATORIES		.00	.00	.00
68	10/17/2018	AND REQUESTS FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF		.00	.00	.00
69	10/24/2018	F: CERTIFICATE OF SERVICE FOR ANTERO RESOURCES CORPORATION'S RESPONSE		.00	.00	.00
70	10/24/2018	TO PLAINTIFF'S THIRD SET OF DISCOVERY REQUESTS		.00	.00	.00
71	10/29/2018	F: NOTICE OF JOINT TELEPHONE STATUS CONFERENCE (11/9/18 @ 2PM)		.00	.00	.00
72	10/29/2018	F: CERTIFICATE OF SERVICE FOR PLAINTIFF'S SUPPLEMENTAL RESPONSE		.00	.00	.00

Plaintiff: DIRECTIONAL ONE SERVICES INC. USA

VS

Defendant: ANTERO RESOURCES CORPORATION

Pro Attorney: SEAN MCGINLEY

Def Attorney:

Page	Date	Memorandum	Account#	Earned	Collected	Balance
73	10/29/2018	(DOCUMENTS ONLY) TO DEFENDANT'S FIRST SET OF DOCUMENT REQUESTS		.00	.00	.00
74	11/09/2018	F: CERTIFICATE OF SERVICE FOR PLAINTIFF'S THIRD SET OF DISCOVERY REQUESTS TO DEFENDANT		.00	.00	.00
75	11/09/2018	REQUESTS TO DEFENDANT		.00	.00	.00
76	11/19/2018	E: SCHEDULING CONFERENCE ORDER; CC TO MCGINLEY, KAMPER, LAWRENCE, PIZZO & DIVITO		.00	.00	.00
77	11/19/2018	PIZZO & DIVITO		.00	.00	.00
78	11/30/2018	F: ANTERO RESOURCES CORPORATION'S MOTION TO COMPEL AND MEMORANDUM OF LAW WITH EXHIBITS A & B		.00	.00	.00
79	11/30/2018	F: ANTERO RESOURCES CORPORATION'S RESPONSE IN OPPOSITION TO DIRECTIONAL ONE SERVICES INC. USA'S MOTION TO COMPEL		.00	.00	.00
80	11/30/2018	DIRECTIONAL ONE SERVICES INC. USA'S MOTION TO COMPEL		.00	.00	.00
81	11/30/2018	F: AMENDED SCHEDULING CONFERENCE ORDER; CC TO MCGINLEY, KAMPER, LAWRENCE, PIZZO & DIVITO		.00	.00	.00
82	12/04/2018	F: CERTIFICATE OF SERVICE FOR PLAINTIFF'S SUPPLEMENTAL RESPONSES TO ANTERO RESOURCES CORPORATION'S SECOND SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF		.00	.00	.00
83	12/04/2018	F: PLAINTIFF'S REPLY BRIEF IN SUPPORT OF MOTION TO COMPEL		.00	.00	.00
84	12/10/2018	F: CERTIFICATE OF SERVICE FOR ANTERO RESOURCES CORPORATION'S RESPONSE TO PLAINTIFF'S FOURTH SET OF DISCOVERY REQUESTS		.00	.00	.00
85	12/10/2018	F: FACE WITNESS LIST OF ANTERO RESOURCES CORPORATION		.00	.00	.00
86	12/10/2018	F: PLAINTIFF'S PRELIMINARY TRIAL WITNESS LIST		.00	.00	.00
87	12/10/2018	F: CERTIFICATE OF SERVICE FOR ANTERO RESOURCES CORPORATION'S RESPONSE TO PLAINTIFF'S FOURTH SET OF DISCOVERY REQUESTS		.00	.00	.00
88	12/10/2018	F: FACE WITNESS LIST OF ANTERO RESOURCES CORPORATION		.00	.00	.00
89	12/10/2018	F: PLAINTIFF'S PRELIMINARY TRIAL WITNESS LIST		.00	.00	.00
90	12/10/2018	F: CERTIFICATE OF SERVICE FOR ANTERO RESOURCES CORPORATION'S RESPONSE TO PLAINTIFF'S FOURTH SET OF DISCOVERY REQUESTS		.00	.00	.00
91	12/12/2018	F: FACE WITNESS LIST OF ANTERO RESOURCES CORPORATION		.00	.00	.00
92	12/12/2018	F: PLAINTIFF'S PRELIMINARY TRIAL WITNESS LIST		.00	.00	.00
93	12/12/2018	F: CERTIFICATE OF SERVICE FOR ANTERO RESOURCES CORPORATION'S RESPONSE TO PLAINTIFF'S FOURTH SET OF DISCOVERY REQUESTS		.00	.00	.00
94	12/12/2018	F: FACE WITNESS LIST OF ANTERO RESOURCES CORPORATION		.00	.00	.00
95	12/13/2018	F: PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO COMPEL		.00	.00	.00
96	12/19/2018	F: ANTERO RESOURCES CORPORATION'S REPLY IN SUPPORT OF ITS MOTION TO		.00	.00	.00

CASE#: 18-C-14

Sub Code:

Date Opened: 04/09/2018

JUDGE: DAVID W. HUMMEL, JR.

Date Printed: 12/21/2018

Plaintiff: DIRECTIONAL ONE SERVICES INC. USA

VS

Defendant: ANTERO RESOURCES CORPORATION

Pro Attorney: SEAN MCGINLEY

Def Attorney:

Page Date Memorandum

97 12/19/2018 COMPEL
98 12/21/2018 F: CERTIFICATE OF SERVICE FOR PLAINTIFF'S THIRD SUPPLEMENTAL RESPONSE
99 12/21/2018 (DOCUMENTS ONLY) TO DEFENDANT'S FIRST SET OF DOCUMENT REQUESTS

<u>Account#</u>	<u>Earned</u>	<u>Collected</u>	<u>Balance</u>
	.00	.00	.00
	.00	.00	.00
	.00	.00	.00
Totals	410.00	410.00	.00

IN THE CIRCUIT COURT OF TYLER COUNTY, WEST VIRGINIA

DIRECTIONAL ONE SERVICES INC., USA,
a foreign corporation authorized to do business
in the State of West Virginia,

Plaintiff,

VS.

// CIVIL ACTION NO. 18-C-14 H

ANTERO RESOURCES CORPORATION,
a foreign corporation authorized to do business
in the State of West Virginia,

Defendant.

FILED

JUL 18 2018

Candy L. Warner
Tyler Co. Circuit Clerk

ORDER

Pending before the Court in the above-styled civil action is Defendant
"Antero Resources Corporation's Motion to Dismiss Plaintiff's First Amended Complaint"
pursuant to W.Va. R.Civ.P. 12(b)(6) for failure to state a claim upon which relief may be
granted. Contemporaneous with the instant motion, Defendant's counsel filed an
extensive memorandum of law in support thereof along with a copy of what it argues is
the controlling *Master Services Agreement* (circa September 2015). Neither further
briefing, nor oral argument would substantially aid the Court in the decisional process.

LAW

The singular purpose of a **Rule 12(b)(6)** motion is to seek a determination
whether the Plaintiff is entitled to offer evidence to support the claims made in the
complaint. *Dimon v. Mansy*, 198 W.Va. 40, 479 S.E.2d 339 (1996). The Plaintiff's
burden in resisting a motion to dismiss is a relatively light one. See *John W. Lodge*
Distributing Co. v. Texaco, Inc., 161 W.Va. 603, 245 S.E.2d 157 (1978); *Mandolidis*
v. Elkins Industries, Inc., 161 W.Va. 695, 246 S.E.2d 907 (1978). Whether a

complaint states a claim upon which relief can be granted is to be determined solely from the provisions of such complaint. Par Mar v. City of Parkersburg, 183 W.Va. 706, 398 S.E.2d 532 (1990). A 12(b)(6) motion must be denied if the complaint states a claim upon which relief can be granted under any legal theory. The trial court, in appraising the sufficiency of a complaint on a 12(b)(6) motion, should not dismiss the Complaint unless it appears beyond doubt that the Plaintiff can prove no set of facts in support of its claim which would entitled him to relief. Sauer, Inc. v. American Bituminous Power Partners, 192 W.Va. 150, 451 S.E.2d 451 (1994)(per curiam). See State ex rel. Smith v. Kermit Lumber & Pressure Treating Co., 220 W.Va. 221, 488 S.E.2d 901 (1997); Price v. Halstead, 177 W.Va. 592, 355 S.E.2d 380 (1987); Moran v. Reed, 175 W.Va. 698, 338 S.E.2d 175 (1985); Sticklen v. Kittle, 168 W.Va. 147, 287 S.E.2d 148 (1981); Flowers v. City of Morgantown, 166 W.Va. 92, 272 S.E.2d 663; John W. Lodge Distributing Co., Inc. v. Texaco, Inc., 161 W.Va. 603, 245 S.E.2d 157 (1978); Mandolidis v. Elkins Industries, Inc., 161 W.Va. 695, 246 S.E.2d 907 (1978); Chapman v. Kane Transfer Co., 160 W.Va. 530, 236 S.E.2d 207 (1977); Conley v. Gibson, 355 U.S. 41, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957). The trial court should not dismiss a Complaint merely because it doubts the Plaintiff will prevail in the action because this is not the purpose or function of Rule 12(b)(6). See John W. Lodge Distributing Co. v. Texaco, Inc., 161 W.Va. 603, 245 S.E.2d 157 (1978); Mandolidis v. Elkins Industries, Inc., 161 W.Va. 695, 246 S.E.2d 907 (1978). The Complaint is to be construed in the light most favorable to the Plaintiff. See Price v. Halstead, 177 W.Va. 592, 355 S.E.2d 380 (1987). See generally, Ewing v. Board of

Educ. of County of Summers, 202 W.Va. 228, 503 S.E.2d 541 (1998); *Kopelman and Associates, L.C. v. Collins*, 196 W.Va. 489, 473 S.E.2d 910 (1996).

In *Bell Atlantic Corp. V. Twombly*, 550 U.S. ___, 127 S.Ct. 1955, 167 L.Ed. 929 (2007), the United States Supreme Court overruled *Conley v. Gibson*, 355 U.S. 41 (1957), which had held that, "the trial court, in appraising the sufficiency of a complaint on a Rule 12(b)(6) motion, should not dismiss the complaint unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief", and instead held, "[A plaintiff's obligation to provide the 'grounds' of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . Factual allegations must be enough to raise a right to relief above a speculative level,]."

"A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief the pleader seeks. Relief in the alternative or of several types may be demanded. Every such pleading shall be accompanied by a completed civil case information statement in the form prescribed by the Supreme Court of Appeals."

Rule 8(a), W.Va. R.Civ.P.

OPINION

The Complaint is to be construed in the light most favorable to the Plaintiff. Price v. Halstead, 177 W.Va. 592, 355 S.E.2d 380 (1987).

The parties hereto are clearly sophisticated business entities who have mutually benefitted from years of working together. Axiomatic is the fact that Defendant knows exactly what is alleged by Plaintiff in its' Complaint filed herein. Technically, the Court could possibly enter an order dismissing the instant civil action; however, it would not do so "with prejudice" as Defendant proposes. Accordingly, Plaintiff could retool and the issues would persist unresolved pending the filing of another complaint.

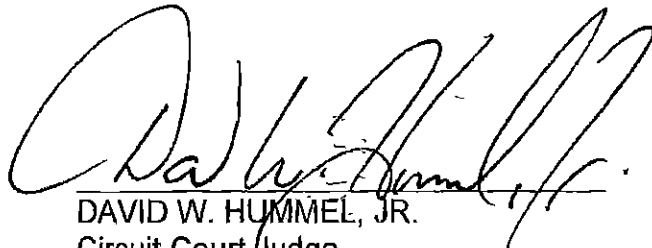
Accordingly, it is the **ORDER** of this Court that Defendants' subject dispositive motion be and hereby is **DENIED**.


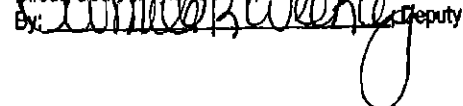
While Defendants' positions may very well be spot-on correct, it is this Court's position that the parties should be given further opportunity for discovery to develop the facts. When discovery has sufficiently produced such facts, Defendant may reach the same issues by way of a Motion for Summary Judgment.

Defendant's Objections and Exceptions are duly noted, overruled and saved.

The Clerk of this Court shall, in accord with W.Va. R.Civ.P. 77(d), transmit a copy of this Order to all counsel of record.

Entered: July 11, 2018.


DAVID W. HUMMEL, JR.
Circuit Court Judge

I hereby certify that the annexed instrument is a true
and correct copy of the original on file in my office.
Attest:  Clerk
Circuit Court of Tyler County, West Virginia
By:  Deputy

CERTIFICATE OF SERVICE

The undersigned certifies that Plaintiff served its **Motion to Refer Case to the Business Court Division** on December 26, 2018 to the following:

Via US Mail to:

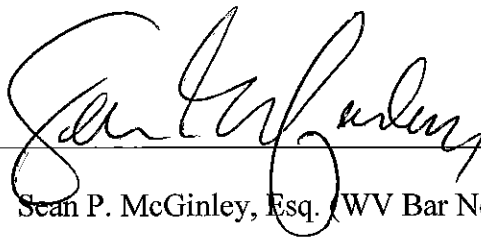
Hon. David W. Hummel, Jr., Chief Judge
Marshall County Courthouse
600 Seventh Street
Moundsville, WV 26041

Tyler County Circuit Clerk's Office
Candy L. Warner, Clerk
P.O. Box 8
Middlebourne, WV 26149

Business Court Division Central Office,
Berkeley County Judicial Center,
380 West South Street, Suite 2100,
Martinsburg, WV 25401.

W. Henry Lawrence
John D. Pizzo
Eric M. DiVito
Steptoe & Johnson PLLC
400 White Oaks Boulevard
Bridgeport, WV 26330
Hank.Lawrence@Steptoe-Johnson.com

By: _____



Sean P. McGinley, Esq. (WV Bar No. 5836)